

DECISION
NO.

CABINET MINUTE

DECISION
NO.

BRISBANE, 10 / 1 / 1978.

27579

CIRCULATION RECORD.

SUBJECT: Brisbane City Council - Proposed Ordinances Relating to Safety and Registration of Private Swimming Pools.

(Submission No. 24589)

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6	MR. HERBERT		26		
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C O N F I D E N T I A L
C A B I N E T M I N U T E

Copy No. 20

Brisbane, 10th January, 1978

Decision No. 27579

Submission No. 24589

TITLE: Brisbane City Council - Proposed
Ordinances relating to Safety and
Registration of Private Swimming
Pools.

CABINET decided:-

That consideration of the contents of the Submission be
deferred.

CIRCULATION: Department of Local Government and copy to Minister.
All other Ministers for perusal and return.

Certified True Copy



A/Secretary to Cabinet.



Submission No.

Copy No.

FOR CABINET

21

Brisbane City Council - Proposed Ordinances relating to safety and registration of private swimming pools

1. The Brisbane City Council has submitted for the approval of the Governor in Council a new set of ordinances dealing with safety and registration of private swimming pools.
2. The City Solicitor has certified that, in his opinion, the Council has power under the City of Brisbane Act to make the ordinances in question and the Council has satisfactorily carried out the procedure prescribed by the Act in respect of the ordinances. Under the Act, the ordinances have to be approved by the Governor in Council before they have force and effect.
3. A summary of the principal provisions of the ordinances is attached - Annexure "A". It will be noted that the ordinances have application to all private swimming pools having a greater depth than 500 millimetres (about 1 ft 8 inches). The ordinances provide that all privately owned pools must be wholly enclosed by a fence having an effective height of not less than 1.2 metres (about 4 feet) incorporating a gate of prescribed dimensions. The specifications of the fence and gate are framed in such a manner as to render the inner-area around the pool child-proof. The application of these provisions is, to some extent, flexible and exemption from certain of the requirements is permissible in some circumstances at the Council's discretion e.g. exemption may be granted where a pool is already fenced in substantial compliance with the ordinances. The ordinances also require the registration of all privately owned pools, with annual renewal of the registration, and contain provisions for the payment of fees as may be fixed by the Council in respect of the registration. The Council's representations indicate, however, that there is no suggestion that the present Council intends to levy such fees. The Council states that the ordinances have been designed with the aim of preventing deaths, by drowning, of small children who fall into swimming pools when not under the supervision of an adult.
4. During the period that the ordinances were open for public inspection, a total of 2974 objections were lodged with the Council against proposals contained therein. A substantial number of similar representations were also made directly to me. The most usual points of objection advanced were that the fencing requirements would be an imposition, financial and otherwise, on the pool owner and were not logical as other open water areas such as rivers, creeks etc. could not be fenced. There was also opposition to the requirement for registration of pools and the provision authorising Council Officers to enter privately owned land to see that the ordinances are observed.
5. As required by the Act, the Council has summarised each of the points of objection raised and furnished its representations thereon - Annexure "B" hereto. The Department of Local Government has examined this submission and is of the opinion that the Council's summary of objections is a fair statement of the grounds thereof.
6. Extracts from the Council's representations on the objections are set out hereunder:-

"While it is realised that the question of the value of safety fencing is still open to debate the overwhelming weight of documents available to the Council indicates the effectiveness of correct fencing in preventing the death of young children by drowning in private swimming pools. It was realised that there were a large number of unfenced natural waterways etc. however, the number of child drownings which occur in natural waterways was considerably

less than in swimming pools when compared on a surface area basis. It would be impossible to effectively fence all naturally occurring waterways and the Council felt that there was more attraction to young children to the clear, sparkling water of a swimming pool as opposed to the murky appearance of natural waters. Also, ornamental pools such as public fountains etc. were usually constructed in areas which would be under constant public view.

Other safety devices could present unforeseen hazards such as in the case of pool covers; a child may be able to get under the cover and not be seen.

The fencing requirements are based on A.S.A. recommendations and the draft Australian Standard Code of Practice for Safety of Private Swimming Pools. It was considered that the type of fence required by the ordinances was the best compromise between that required to afford complete protection and what could be reasonably expected to be paid for and accepted by pool owners.

There was evidence of a great deal of confusion in a number of objections due to the fact that a number of objectors did not understand the definition of fencing. A fence could include part of a building or retaining wall. It would therefore not be necessary for people with pools close to their houses, patios etc. to build a separate fence but merely to adapt doors leading to the pool so that they are self-closing and have latches that comply with the ordinances. In addition correctly erected fences on the boundaries of a property could be incorporated in the design of a protective facility. The Council has been empowered to grant exemptions from the provisions of the ordinances in certain cases because it was realised that some pools would have been constructed in locations or on certain blocks of land which because of the topography of the site would render construction of protective devices impossible or unreasonable.

Registration of pools is required to allow for the setting up of statistical records so that organised construction programs can be instituted and a proper control of the ordinances could be introduced. This is particularly necessary in relation to above ground pools which in many cases are purchased as a unit installed without a building approval and filled by means of a garden hose. It is not the intention of the present Council to introduce a registration fee.

A variety of Council Officers are presently permitted to enter private properties e.g. Health Surveyors, Building Inspectors etc. to carry out their duties and it is considered that Inspectors appointed under these ordinances should have similar powers of entry. It is quite probable that such officers will be Health Surveyors or Building Inspectors who already possess such powers of entry.

A large volume of public health and safety legislation is necessarily compulsive because of the general apathy of the public to introduce such measures on a voluntary basis. Regrettably, such legislation must also contain enforcement provisions whereby a public authority can ensure that the legislation is complied with. The penalties included are quite normal in Local Authority Bylaws in Queensland and are in fact lower than those in the model ordinances circulated by the Department of Local Government. The penalties would be imposed by a Court of law and not the City Council".

7. The technical aspects of the ordinances have been examined by the Deputy Chief Engineer of the Department of Local Government and a report furnished by him to the Director of Local Government is attached hereto as Annexure "C". This report indicates that the basis of the Council's ordinances is a series of papers written by Dr. John Pearn, Reader in Child Health, University of Queensland and Mr. James Nixon, Senior Tutor, Department of Child Health at the University. The Deputy Chief Engineer in his report makes the following statements.

(a) Evidence to date indicates that the majority of drownings are in backyard swimming pools without adequate fencing.

(b) There are no adequate measures which can be taken to prevent accidents in the sea, rivers etc. but, if steps can be taken to reduce drownings in private swimming pools, this action is considered to be worthwhile.

(c) It is true that fences can result in a false sense of security being developed, but the stress is on the provision of adequate fencing of swimming pools. The fact that some children can climb an approved fence does not disprove the fact that the fence will stop the large majority of young children. Those that can climb the fence are probably good swimmers. The cost of fencing of private swimming pools should not be very high especially if the owner performs the work himself.

(d) There is a need for control of the quality of water in privately owned swimming pools, especially smaller pools. At present there is little control possible over the sterilisation of water in pools and drainage is a problem in many cases since the pool must be emptied in the backyard.

(e) The standard of fencing prescribed in the ordinances is based on Australian Standard Specifications and is considered adequate.

8. The ordinances when they were advertised aroused considerable feeling in some sections of the community and were given widespread publicity through the media. Strong opposition has been voiced against the proposals and the issue has become rather emotional. I am of the opinion that the objections are quite genuine and have been motivated by feelings of injustice on the part of the persons concerned. Nevertheless, the Council wishes to proceed with the ordinances and I consider it has adequately answered the various points raised by the objectors. In my view there could be merit in the proposals as a means of preventing or reducing child drownings, notwithstanding the requirements which may appear onerous to some pool owners.

9. I have considered the proposals carefully and, having regard to all the circumstances, feel that the ordinances should be submitted for approval. Bylaws made by a considerable number of other Local Authorities dealing with private swimming pools provide for fencing. A list of such Local Authorities is set out hereunder:-

Cities Cairns, Mount Isa, Toowoomba, Townsville, Warwick.

Towns Dalby, Hervey Bay, Roma.

Shires Albert, Ayr, Atherton, Banana, Belyando, Boonah, Bowen, Caboolture, Calliope, Carpentaria, Douglas, Duaringa, Gatton, Herberton, Johnstone, Kingaroy, Landsborough, Mareeba, Mirani, Moreton, Mulgrave, Noosa, Pioneer, Pine Rivers, Proserpine, Redland, Rosalie, Waggamba, Wambo, Warroo, Woongarra.

10. Recommendation

I recommend that the ordinances made by the Brisbane City Council dealing with the safety and registration of private swimming pools be submitted for the approval of the Governor in Council.

R.J. HINZE)
Minister for Local Government
and Main Roads